

Md. Gulam Rasool and anr. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Mar-22-2001

Judge : Ravi S. Dhavan, C.J. and Shashank Kr. Singh, J.

Acts : [Constitution of India](#) - Article 226

Appeal No. : C.W.J.C. No. 9588 of 1999

Appellant : Md. Gulam Rasool and anr.

Respondent : State of Bihar and ors.

Advocate for Def. : G.P. Rai, A.A.G. III

Advocate for Pet/Ap. : B.P. Verma, Adv.

Disposition : Petition dismissed

Prior history : 1. No aspect of the issues in the present petition brought to the High Court as a Public Interest Litigation (PIL) is different from an earlier petition filed by the same petitioners, Md. Gulam Rasool and Md. Shafique. The earlier petition being C.W.J.C. No. 7518/98 was also brought as a PIL. On the earlier petition notice had been issued, Thus, whatever order was passed by the High Court rested on what had been contended in the writ petition. The observation of the Court in its order dated 1

Judgement :

1. No aspect of the issues in the present petition brought to the High Court as a Public Interest Litigation (PIL) is different from an earlier petition filed by the same petitioners, Md. Gulam Rasool and Md. Shafique. The earlier petition being C.W.J.C. No. 7518/98 was also brought as a PIL. On the earlier petition notice had been issued, Thus, whatever order was passed by the High Court rested on what had been contended in the writ petition. The observation of the Court in its order dated 15th September, 1998 was to the effect that, should the petitioner be advised, they may approach the district administration, Apparently, a situation was conveyed to the Court as if the district administration was lacking in its effort to control a law and order situation. Thus, the Court observed that it hoped and trusted that the district administration considering the gravity of the situation, as alleged, would take immediate steps for doing the needful in maintaining law and order. The petition was consigned accordingly.

2. The same petitioners Md. Gulam Rasool and Md. Shafique have come to the High Court again filed the present writ petition as a PIL. Fortunately, in the present writ petition, the Court has the benefit of the reply by the District Magistrate, Madhubani. In the circumstances, the perspective is clearer in the present writ petition than it was in the earlier petition in which the Court did not have the version of the State. For reasons best known to the petitioners, they have not replied to the affidavit of the District Magistrate. Thus, the pleadings rest on what the two petitioners contend and what the District Magistrate, Madhubani, gives the Court as his assessment of the situation and the ground reality.

3. The Court would like to observe at the out-set that a PIL is not a petition of right that the Court must take into account the attempt of the petitioners to undertake an exercise again and again until a particular order is obtained as a certificate from the High Court so they may lay a claim, duly certified by the High Court, on what they desire. The High Court cannot permit such a situation and particularly in the facts and circumstances of the present case.

4. The story being indicated to the High Court in the present second writ petition is that the petitioners have a following in their community to establish a mosque and that the district administration is preventing their from constructing or establishing

a mosque

5. The report as filed by the District Magistrate by his counter affidavit gives an entirely different picture. The petitioners apparently would like to convey the impression as if they are leaders of their community; and given an occasion would like to assert this in the village. Clearly, this is a situation of playing politics in the name of religion and within the community. There are elders in the village, of the community to which the petitioners belong, and they apparently have been advising the petitioners that already a mosque exists in the village and is being used for generations and that two mosques in the same little village may not be appropriate,

6. But the advice of the elderly and those in charge of the ecclesiastical order within the Muslim community has not been taken very kindly by the two petitioners. As the value system is witnessing a change in the structure of society, the village also is no exception to this change. The petitioners, products of that change, are also no exception. The concept of community that is the village, is giving way to community, and there also the community has rivals within.

7. The two petitioners are neither the elders of their community nor acknowledged as Imam or Maulvi. They talk of namaz offered their way, but at their site and place. But what is so inherently wrong with the mosque where namaz has been offered by the village community all these years ?

8. Namaz is prayer. It is offered because the Holy Book THE KORAN ordains it. When the Mu'azzin, the caller of azan, summons to prayer or calls from the village mosque, from a minaret or otherwise, it is one voice for the village calling on the faithful to come to prayer. It is one voice of the mu'azzin, a call from one mosque, for one prayer, but by all, as one congregation. As far as the call for prayer be heard it will call all for one prayer. Islam is a monotheistic religion. It stands for oneness in all its attributes. The prayer hour is ordained in THE KORAN'. In this regard, it is written:

'Regularly perform thy prayer at the declension of the sun, at the first Darkness of the night, and the prayer of day-break, for the prayer of Day-break is borne

witness unto by the Angels. And watch some part of the night in the same exercise, as a work of supererogation for Thee; peradventure thy Lord will raise thee to an honourable station.'

And then:

'O THOU wrapped up, arise to prayer, and continue therein during the night, except a small part; that is to say, during one half thereof: or do thou lessen the same a little, or add thereto. And repeat the KORAN with a distinct and sonorous voice : for we will lay on thee a weighty word. Verily the rising by night is more efficacious for steadfast continuance in devotion. And more conducive to decent pronunciation; for in the day-time thou hast long employment.'

9. The two petitioners are the products of a growing number of those who do not have respect for religion but play petty politics with it. And, the village today or even any urban locality may hear over loudspeakers two azans, if not more, when one is called for, the ringing of temple bells but from several temples of the same deity in the same village. This arises from misplaced power politics with religion to shout a second prayer over the first prayer, to impose another mosque when within the community the elders say 'let there be one'. Muscle tactics are being used to make temples, idgahs and other supposedly sacred places, on side walks of roads, blocking passage; in dedicated parks and on public lands, which renders all such structures encroachments. Made in violation of the law these are encroachments not places of worship. Such places are not blessed in the name of God, whoever may claim HIM wrongly to be on their side. This is politics playing with religion for aggrandisement, for offerings as an unholy enrichment, or to assert naked power. Nobody's God showers blessings where Peace does not reside, where Truth does not prevail and tranquillity cannot descend.

10. It is stated in the petition that the petitioners started constructing a mosque on their own property. Nothing restrained them from having a personal mosque or an Idgah for the use of whatever followers they may command. They may, but this new venture apparently was writ large with complications. The old mosque which stands in the village apparently did not disturb anyone. The new place sought to be used by the petitioners turned out to be within close proximity of a Brahmsthan

of the Hindu community, as confirmed in the counter affidavit by the District Magistrate. The situation is entirely of the petitioners making, manufacturing a complication when none existed before. They are making noise that the District Magistrate is not permitting them to establish a mosque or an Idgah. This is not so. The petitioners are violators of the peace in the village. They were responsible on many occasions for law and order situations and the District Magistrate had to take proceedings as warranted in urgent cases of nuisance or apprehended danger, under Section 144 of the Code of Criminal Procedure, 1973, to take steps to restore law and order.

11. Thus, it would be best that this second writ petition is laid to rest and the High Court will not make a mistake in lending a certificate to the petitioners to certify their erring actions.

This was an ill advised petition.

12. Dismissed.

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